

UNITED STATES DISTRICT COURT
DISTRICT OF OREGON
PORTLAND DIVISION

CLACKAMAS COUNTY, OREGON,

No. 3:13-cv-01968-HU

Plaintiff,

**FINDINGS AND
RECOMMENDATION**

v.

RON E. MEDLEY,

Defendant.

HUBEL, Magistrate Judge:

Under consideration is Ron Medley's ("Medley") notice to remove this traffic case from Clackamas County Justice Court, Case No. 1041902909. Medley appears *pro se* and has filed a motion to proceed in forma pauperis.

I. FACTS AND PROCEDURAL HISTORY

On September 9, 2013, at approximately 1:15 a.m., Medley was issued a traffic citation in Clackamas County for failing to maintain a safe distance from an emergency vehicle. The presumptive fine for such a traffic violation is \$260.00. Although

1 Medley now resides in Lake Oswego, Oregon, he claims that he was an
2 Arizona resident at the time of the traffic stop.

3 Medley asserts that he was racially profiled; that the officer
4 had no valid reason to stop him; and that Clackamas County has
5 generally conducted its past activities in a manner inconsistent
6 with Title VII of the Civil Rights Act of 1964. In the caption of
7 the notice of removal, Medley also references "Violation of Equal
8 Protection under the U.S. Constitution"; "Violation of Right to
9 Travel under U.S. Constitution"; "Violation of Abuse of Process
10 under U.S. Constitution"; "Violation of Race Discrimination"; and
11 "Violation of First and Fourth Amendment Rights." (Notice of
12 Removal at 1.)

13 On October 10, 2013, Medley was served with a summons and copy
14 of a "Trial Date Notice," indicating that Medley had entered a plea
15 of not guilty and that there was a trial scheduled for November 20,
16 2013, at 4:30 p.m., in Clackamas County Justice Court. (Notice of
17 Removal ¶ 2, Ex. A at 1.) Nearly one month later, on November 6,
18 2013, Medley removed the Clackamas County Justice Court action to
19 federal court pursuant to 28 U.S.C. §§ 1443(1), 1455. According to
20 Medley, removal is appropriate under § 1443(1) because "this is a
21 question of 'racial equality' and [he] cannot enforce his rights in
22 [the] state court action." (Notice of Removal ¶¶ 5-6.) Twelve
23 days later, on November 18, 2013, Medley filed a motion to dismiss
24 the Clackamas County Justice Court complaint pursuant to Federal
25 Rule of Civil Procedure ("Rule") 12(b)(6).

26 II. DISCUSSION

27 As a threshold matter, the Court must examine whether it has
28 subject matter jurisdiction over Medley's case. "A federal court

1 must *sua sponte* remand a case removed from state court if the
2 federal court lacks subject matter jurisdiction over the case.”
3 *Butler-El v. Maryland, Inc.*, No. JFM-12-2707, 2012 WL 4846769, at
4 *1 (D. Md. Oct. 9, 2012).

5 There does not appear to be an independent basis for federal
6 question or diversity jurisdiction in this case. See *Takeda v. Nw.*
7 *Nat'l Life Ins. Co.*, 765 F.2d 815, 821-22 (9th Cir. 1985) (stating
8 that federal question jurisdiction arises only from the face of a
9 well-pleaded complaint, not the defenses or counterclaims alleged
10 by a defendant); *Matheson v. Progressive Specialty Ins. Co.*, 319
11 F.3d 1089, 1090 (9th Cir. 2003) (per curiam) (explaining that, in
12 a diversity action, the removing party must prove that amount in
13 controversy exceeds \$75,000 where it is not “facially evident” from
14 complaint).

15 “Section 1443 gives a right of removal to, among others,
16 certain petitioners who claim federally secured rights as a defense
17 to a state prosecution.” *California v. Sandoval*, 434 F.2d 635, 636
18 (9th Cir. 1971) (per curiam). As the Ninth Circuit explained in
19 *Sandoval*,

20 [a]ll petitions for removal [under § 1443] must satisfy
21 two criteria: first, the petitioners must assert, as a
22 defense to the prosecution, rights that are given to them
23 by explicit statutory enactment protecting equal racial
24 civil rights. Second, petitioners must assert that the
25 state courts will not enforce that right, and that
26 allegation must be supported by reference to a state
27 statute or a constitutional provision that purports to
28 command the state courts to ignore the federal rights.
Bad experiences with the particular court in question
will not suffice.

26 *Id.* (internal quotations omitted).

27 In *Hawaii v. Jim*, 31 F. App'x 426 (9th Cir. 2002), for
28 example, the notice of removal failed “to address how the Hawaiian

1 Homes Commission Act of 1920, or the Admissions Act of 1959,
2 explicitly afford[ed] her a defense as a Native Hawaiian from
3 citation for automobile-related infractions, and failed to indicate
4 which state law or constitutional provision commands the State of
5 Hawaii to ignore her federal rights." *Id.* at 427. As a result,
6 the Ninth Circuit concluded that the district court properly
7 remanded the matter to state court. *Id.*

8 At a minimum in this case, as in *Jim*, Medley's notice of
9 removal fails to indicate which state law or constitutional
10 provision commands the State of Oregon to ignore his federal
11 rights. In the Court's view, "[a]ll of the issues raised by
12 [Medley] are rights that are certainly enforceable in state court.
13 Indeed, it is generally presumed that 'the protection of federal
14 constitutional or statutory rights [can] be effected in the pending
15 state proceedings, civil or criminal.'" *Delaware v. Burr*, 2012 WL
16 113012, at *2 (D. Del. Jan. 12, 2012) (quoting *Johnson v.*
17 *Mississippi*, 421 U.S. 213, 219-20 (1975)).

18 III. CONCLUSION

19 For the reasons stated, the present action should be summarily
20 remanded to state court by separate order. Pending motions, if
21 any, should be denied as moot.

22 IV. SCHEDULING ORDER

23 The Findings and Recommendation will be referred to a district
24 judge. Objections, if any, are due **January 2, 2014**. If no
25 objections are filed, then the Findings and Recommendation will go
26 under advisement on that date. If objections are filed, then a
27 response is due **January 20, 2014**. When the response is due or
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1 filed, whichever date is earlier, the Findings and Recommendation
2 will go under advisement.

3 Dated this 9th day of December, 2013.

4 /s/ Dennis J. Hubel

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6 DENNIS J. HUBEL
7 United States Magistrate Judge
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